COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT

1350 Pennsylvania Avenue, NW, Washington, DC 20004 **DRAFT**

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: November 17, 2020

SUBJECT: Report on Bill 23-392, "Students' Right to Home and Hospital Instruction Act of 2020"

CONTENTS

I. COMMITTEE RECOMMENDATION

The Committee of the Whole reports favorably on Bill 23-392, the "Students' Right to Home and Hospital Instruction Act of 2020," adopts the Committee Print as approved by the Committee on Education with amendments, and recommends approval by the Council.

II. COMMITTEE REASONING & SECTION-BY-SECTION ANALYSIS

The purpose of Bill 23-392 is to provide home and hospital instruction to students who are unable to attend school physically because of a medical issue. Specifically, the bill requires the District of Columbia Public Schools (DCPS) and the District's public charter schools to create and implement a home and hospital instruction program and to provide home and hospital instruction once the parent[1] of a student submits of a written application that includes a medical certification of need to the applicable local education agency (LEA). Currently, LEAs are able to decide whether a student receives home and hospital instruction, regardless of the medical opinions they receive, and there is no way to appeal the LEA's decision to an independent body. Moreover, students who need such instruction often have to wait several weeks to months until they receive it, resulting in substantial learning loss. Bill 23-392 seeks to solve these issues.

The Committee of the Whole's Committee Print is similar to the Committee on Education's committee print but it does make several changes. First, the Committee Print changes the applicability date of the bill from School Year (SY) 2020-2021 to SY 2022-2023. Given that SY

[1] Bill 23-392 defines "parent" as "a parent, guardian, or other person who has custody or control of a student enrolled in a school or in an LEA."

2020-2021 is currently in session and that the bill has a fiscal impact – and thus will not be able to be implemented until it has been funded, which is most likely starting in fiscal year 2022 (aligning with SY 2021-2022) – the Committee believes it is best to delay implementation until SY 2022-2023. This will allow the Office of the State Superintendent of Education (OSSE) time to produce the necessary regulations and LEAs time to plan so that they will be ready to implement successful home and hospital instruction programs at the beginning of SY 2022-2023.

Second, at the request of the Executive, the Committee Print eliminates a licensed clinical social worker from the list of individuals who can provide a medical certification of need, as they do not generally do not make these types of determinations. Given that approval of home and hospital instruction rests solely on the medical certification of need, it is important that such determinations be made by individuals trained in doing so.

Third, based on feedback the Committee received from the public charter school sector[2] and the Children's Law Center, the Committee Print clarifies the eligibility determination process. Specifically, it states that a parent may make an oral or written request to the LEA for home and hospital instruction, but in order for a student to receive such instruction, the parent must submit a written application to the appropriate LEA. As part of that written application, the parent must include a medical certification of need before the home and hospital instruction will be approved. Additionally, if a parent makes a request, the LEA shall provide information to the parent explaining the process for submitting a written application within two days of receiving the request. Within five days of receiving an application, a LEA must explain, in writing, its decision to approve or deny a request for home and hospital instruction. If it denies a request, the LEA must state that its denial is premised on not receiving a medical certification of need.

Conversely, the Committee on Education's committee print indicated that a parent could submit an oral or written application, which also had to include the medical certification of need, in order for a student to receive home and hospital instruction. While the Committee supports allowing parents to make an oral request, the Committee agrees with the Executive[3] and the public charter school sector that an actual application for home and hospital instruction needs to be in writing given that it includes medical information. Trying to capture such information orally will be difficult, prone to error, and potentially result in a student not receiving the instruction he or she needs because the medical information given orally is not documented correctly. Thus, the Committee allows for an oral request but requires the actual application to be in writing. Additionally, to streamline this process and give LEAs more time to review the application, the Committee amends the determination timeline to five days, as opposed to two days to make a determination and two days to provide a reasoning for that determination. The Children's Law Center supports this approach.

The Committee maintains the requirement for LEAs to approve home and hospital instruction if a written application containing a medical certification of need is submitted to the LEA. However, the Committee recognizes that LEAs may need to continue to speak with the

[2] This includes the Public Charter School Board (PCSB) and the DC Public Charter School Alliance
[3] This includes District of Columbia Public Schools, OSSE, the Deputy Mayor for Education, and the Mayor's Office of Policy and Legislative Affairs.

medical professionals even after the instruction has begun. The Committee also wants to ensure that a student is only out of school as long as is medically necessary. Thus, the Committee Print states that while the home and hospital instruction is being administered, a LEA may make reasonable requests for information concerning the student's continuing medical need for home and hospital instruction and work with the student's parent to develop accommodations that will permit a student to return to school. It also requires OSSE to promulgate regulations that will guide the eligibility determination process and ensure due deference to the medical opinion in the medical certification of needs as LEAs continue to speak with the healthcare professional who provided the certification. This deference is not given currently by some LEAs, and OSSE's regulations will provide the necessary safeguards needed for such deference.

Fourth, given that the Committee on Education's committee print is silent, the Committee, in consultation with the Children's Law Center, establishes the following burden of proof standards for the appeals process:

- Parents shall have the burden of proof.
- If the parent has submitted a medical certification of need, there will be a presumption in favor of the medical opinion included in the certification.
- LEAs will then have the burden of proof in seeking to rebut the presumption and will only be able to do so by submitting the evidence from a qualified healthcare professional.

This approach strikes a fair balance by ensuring that decisions related to students' needs for home and hospital instruction is rooted in medicine rather than one's assumptions about a student's medical needs or the best way to address those needs. Currently, LEAs are denying requests for home and hospital instruction because they are overriding medical opinions without any medical basis for doing so. This is unacceptable. Without this burden of proof standard, Children's Law Center and the Committee are concerned that that medical opinions will continue to be overridden by individuals who have no medical expertise or reasoning for doing so. As such, the Committee felt that it was important to include establish a standard for burden of proof.

Fifth, the Committee Print clarifies that there are three circumstances in which a LEA may provide direct instruction via videotelephony rather than in-person: 1) during a public health emergency; 2) when a student of household member has been diagnosed with a communicable disease; or 3) when a LEA determines safety concerns prevent the delivery of in-person services. The Committee on Education's committee print requires in-person, direct instruction unless a parent consents to videotelephony direct instruction. While the Committee supports in-person teaching, circumstances, such as the COVID-19 pandemic, do exist where it may be unsafe both for the student and the instructor. Rather than having to hope that a parent will consent in such instances, the Committee decided to amend the legislation to account for such cases. Outside of these three instances, the Committee Print retains the requirement that LEAs deliver in-person, direct instruction unless a parent consents to instruction being done via telephony.

Sixth, the Committee adds one additional statistic to be reported to OSSE on an annual basis – the name of the individual who provided the medical certification of need. This statistic will allow for better oversight and transparency by enabling individuals to see if there are specific

medical professional who are frequently providing the medical certification of need. Such reporting is also mandated by the District's medical marijuana program and required for similar reasons – to identify if there are medical professionals who are known to abuse the privilege. Thus, the Committee believes it is important to include this statistic as part of the annual reporting requirements.

The Committee supports Bill 23-392 as amended and believes that it will ensure that students who need home and hospital instruction both receive it and that it is provided in a timely manner. Every day that a student misses school translates to learning loss. Students who are experiencing medical issues should not also have to worry about being left behind in school. Parents should not have to be involved in protracted battles with LEAs just to obtain necessary home or hospital instruction for their children. As Bill 23-392 addresses these issues and ensures that students will be able to receive the education they deserve, regardless of whether that is at home or hospital. For these reasons, the Committee recommends approval of Bill 23-392 as proposed in the Committee Print.

III. ABBREVIATED LEGISLATIVE CHRONOLOGY

(see the Committee on Education's committee report for the full chronology)

July 9, 2019	Bill 23-392, "Students' Right to Home and Hospital Instruction Act of 2020," is introduced by Councilmember Grosso, Cheh, Nadeau, Todd, R. White, and T. White, and sequentially referred to the Committee on Education and the Committee of the Whole.
October 21, 2019	The Committee of the Whole and the Committee on Education hold a joint hearing on Bills 23-392.
February 11, 2020	The Committee on Education marks up Bill 23-392.
February 18, 2020	The Committee of the Whole marks-up Bill 23-392.

IV. SUMMARY OF PUBLIC TESTIMONY

The Committee of the Whole and Committee on Education held a joint public hearing on October 21, 2019 on three bills, including Bill 23-392. A summary of the testimony is in the Committee on Education's committee report on Bill 23-392 (attached). Four individuals testified in support of the legislation. The Committee on Education also received two additional statements – one from Two Rivers Public Charter School, which expressed concerns with the bill, and an individual who supported the bill.

V. FISCAL IMPACT

No fiscal impact statement was available when the Committee on Education marked up

Bill 23-392. The attached November 16, 2020 Fiscal Impact Statement by the Chief Financial Officer states that funds are not sufficient in the fiscal year 2021 through 2024 financial plan. Bill 23-392 will have no cost in fiscal year 2021, but will cost $162,000 in fiscal year 2022, $787,000 in fiscal year 2023, and $788,000 in fiscal year 2024. The total four year cost is $1.737 million.

VI. COMMITTEE ACTION

VII. ATTACHMENTS

1. Bill 23-392 as introduced.
2. Committee on Education's report on Bill 23-392 without attachments.
3. Fiscal Impact Statement for Bill 23-392.
4. Legal Sufficiency Determination for PR 23-392.
5. Committee Print for Bill 23-392.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : Nyasha Smith, Secretary to the Council

Date : July 11, 2019

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, July 9, 2019. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Students' Right to Home or Hospital Instruction Act of 2019", B23-0392

INTRODUCED BY: Councilmembers Grosso, Todd, T. White, Nadeau, Cheh, and R. White

CO-SPONSORED BY: Councilmember Allen

The Chairman is referring this legislation sequentially to the Committee on Education and the Committee of the Whole with comments from the Committee on Health.

Attachment

cc: General Counsel
Budget Director
Legislative Services

Councilmember Brianne K. Nadeau

Councilmember David Grosso

Councilmember Mary M. Cheh

Councilmember Brandon T. Todd

Councilmember Robert C. White, Jr.

Councilmember Trayon White, Sr.

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require every LEA to adopt and implement a home or hospital instruction program that provides academic instruction and support to students who have been or will be absent from their school of enrollment for 10 or more consecutive or cumulative school days due to a physical condition or a psychological condition; require OSSE to administer the appeals process; require OSSE to promulgate regulations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Students' Right to Home or Hospital Instruction Act of 2019".

Sec. 2. Definitions.

(a) For the purpose of this act, the term:

(1) "Home or hospital instruction" means a program that provides instruction and support to students who have been or will be absent from their school of enrollment 10 or more consecutive or cumulative school days due to a physical or psychological condition.

(2) "LEA" means a local education agency.

(3) "Medical certification of need" means a diagnosis with an explanation of how a physical condition or a psychological condition has caused or would cause the student to be absent from their school of enrollment 10 or more consecutive or cumulative school days that is

39 certified by a licensed physician, licensed nurse practitioner, licensed clinical psychologist, or
40 physician's assistant.
41 (4) "Medical recertification of need" means documentation verifying the
42 continued need for home or hospital instruction.
43 (5) "OSSE" means the Office of the State Superintendent of Education.
44 (6) "Physical condition" means a condition that is a serious or terminal illness,
45 comprises the student's immune system, requires surgery, or postpartum recovery.
46 (7) "Psychological condition" means a condition that affects a student's mood,
47 thinking, or behavior.
48 Sec. 3. Home or hospital instruction program.
49 (a) Beginning in school year 2020-2021, every LEA shall adopt and implement a home or
50 hospital instruction program that provides academic instruction and support to students who have
51 been or will be absent from their school of enrollment for 10 or more consecutive or cumulative
52 school days due to a physical condition or a psychological condition.
53 (b) Every LEA shall designate at least one employee to manage the LEA's home or
54 hospital instruction program.
55 Sec. 4. Eligibility determination.
56 (a) A parent or guardian of a student may apply to an LEA for home or hospital
57 instruction orally or in writing. The LEA shall document any request from a parent or guardian
58 within 2 school days of receipt.
59 (b) A student shall be eligible for home or hospital instruction if they have appropriately
60 submitted to the LEA a medical certification of need.

61 (c) For students who are eligible for special education or related services, the IEP team
62 must revise the IEP as appropriate and in alignment with all local and federal law.
63 (d) To ensure timely eligibility finding, the LEA shall complete the home or hospital
64 eligibility determination within 2 school days of receipt of the medical certification of need.
65 (1) An LEA shall provide a written explanation as to why a request for home or
66 hospital instruction was approved or denied within 2 school days of the decision.
67 Sec. 5. Continuation or termination of home or hospital instruction services.
68 A student's home or hospital instruction shall be discontinued once it is no longer needed
69 as outlined in the medical certification of need, unless a parent or guardian appropriately
70 completes and submits a medical recertification of need to the LEA.
71 Sec. 6. Appeals process.
72 (a) OSSE shall administer the appeals process for a denial of eligibility determination.
73 (b) A parent or guardian has a right to appeal the decision made by the LEA. The appeals
74 process is as follows:
75 (1) A parent or guardian shall submit a written request for an appeal to OSSE. As
76 part of their written request the parent or guardian may request an opportunity to be heard in-
77 person by the appeals panel.
78 (2) The appeal shall be reviewed by a three-member panel within OSSE.
79 (3) The appeals panel shall issue a written response to the parent or guardian
80 within 15 schools days of receipt of the appeal.
81 (i) The decision of the appeals panel shall be final.
82 Sec. 7. Delivery of home or hospital instruction .

83 (a) An LEA shall begin delivering instruction and support within 5 schools days of an
84 eligibility determination.
85 (b) An LEA shall develop a home or hospital instruction program that:
86 (1) Guarantees a minimum number of teacher-delivered instructional hours in an
87 alternative setting;
88 (2) Provides content in line with what is being delivered in the student's
89 classroom to the best of its ability; and
90 (3) Delivers instruction by virtual means only when necessary.
91 (c) In accordance with subsection (a) of this section, each LEA may:
92 (1) Directly provide instructional services to a student;
93 (2) Contract with private providers to deliver instructional services;
94 (3) Contract with other LEAs to provide instructional services; or
95 (4) Combine any of the delivery options described in paragraphs (1) through (3)
96 of this section.
97 Sec. 8. Attendance.
98 Each LEA shall maintain a student receiving home or hospital instruction on the regular
99 school attendance roll and count the student as present, except when a student is not available for
100 the scheduled instructional service, in which event the student is counted absent.
101 Sec. 9. Healthcare institutions.
102 (a) A healthcare institution that admits a student that should be receiving instruction and
103 support in accordance with this act shall not impede a student's instruction provided that nothing
104 in this section requires the healthcare institution to violate a federal law.

105 (b) Each healthcare institution in subsection (a) shall establish a point of contact to
106 coordinate home or hospital instruction with the LEA.
107 Sec. 10. Transparency and accountability.
108 (a) Every LEA shall publish their home or hospital instruction program online in a reader
109 friendly format for parents and guardians.
110 (b) Every LEA shall report on an annual basis to OSSE eligibility determinations, any
111 reason for refusal, type of instruction, and service delivery.
112 (c) Once a parent or guardian of a student applies to an LEA for home or hospital
113 instruction, the LEA shall require the home or hospital designee to provide the parent or guardian
114 with a notice of their rights as they pertain to the Individuals with Disabilities Education Act,
115 section 504 of the Rehabilitation Act of 1973, and home or hospital instruction policy.
116 Sec. 11. Rulemaking Authority.
117 Within 120 days of the effective date of this act, OSSE shall promulgate proposed
118 regulations to implement the provision of this act.
119 Sec. 12. Fiscal impact statement.
120 The Council adopts the fiscal impact statement in the committee report as the fiscal
121 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
122 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).
123 Sec. 13. Effective date.
124 This act shall take effect following approval by the Mayor (or in the event of veto by the
125 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
126 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

127 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of

128 Columbia Register.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON EDUCATION
COMMITTEE REPORT
1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers

FROM: Councilmember David Grosso
Committee on Education

DATE: February 11, 2020

SUBJECT: Report on B23-0392, the "Students' Right to Home and Hospital Instruction Act of 2019"

The Committee on Education, to which B23-0392, "Students' Right to Home and Hospital Instruction Act of 2019"[1] was referred, reports favorably thereon, and recommends approval by the Council.

CONTENTS

I. BACKGROUND AND NEED

Introduction

On July 9, 2019, Councilmember David Grosso (At-Large), along with Councilmembers Todd, T. White, Nadeau, Cheh, and R. White introduced B23-0392, "Students' Right to Home or Hospital Instruction Act of 2019." As introduced, the bill would require every District of Columbia local education agency (LEA) to adopt and implement a home and hospital instruction program that provides academic instruction and support to students who have been or will be absent from their school of enrollment for ten or more consecutive or cumulative school days due to a physical condition or psychological condition. The bill would also require the Office of the State Superintendent of Education (OSSE) to promulgate regulations and administer an appeals process.

[1] The Committee has changed the short title of this measure from "Students' Right to Home or Hospital Instruction Act of 2019" to reflect the inclusivity of a student's right to both home and hospital instruction.

District of Columbia Public Schools Home and Hospital Instruction Program
District of Columbia Public Schools (DCPS) operates a Home and Hospital Instruction Program (HHIP) which "offers an individualized, blended-learning instructional model to students who are medically confined for two weeks or more."[2] The stated purpose of HHIP includes "engaging the student, parents/guardians, medical professional, and school-based team with the goal of successfully transitioning the student back to their school of enrollment or appropriate school-based setting."[3]

This current DCPS HHIP structure is described below:

Eligibility
According to the SY18-19 Parent Guide to Home/Hospital Instruction Program[4], DCPS HHIP services are available to students who are:

- Enrolled in a DCPS school
- A resident of a ward of DC
- Placed in a private school by DCPS
- Attending a nonpublic school that is being monitored by DCPS
- Attending a dependent charter school (where DCPS is the LEA Representative) and receive SPED services

The parent guide further states that in order for students to be considered for HHIP services, they must meet the following criteria:

- Confined to the home and/or hospital for two weeks or more for medical reasons, including six weeks of post-partum recovery (extended to eight weeks for cesarean deliveries); OR
- Experienced intermittent absences that are equivalent to two weeks or more (based on historical or present data) due to chronic health impairments.

Upon meeting the criteria and completing and submitting all required forms, students may receive HHIP services to academically support them while they are medically confined and to assist in their transition back to school.

Referral
Parents/guardians, treating physicians, and the school-based HHIP Designee are required to complete and submit all necessary forms to successfully submit a HHIP referral. All five

[2] "SY2018 – 19 Parent Guide to Home/Hospital Instruction Program (HHIP)." *District of Columbia Public Schools*, Version 01.
[3] Ibid.
[4] Ibid.

required forms are listed and described in the replicated table below from the SY18-19 Parent Guide to HHIP. Parents/guardians can access these forms online.[5]

Name of Form	Purpose	Completed By...
Physician Verification	States diagnosis which is confining student to the home/hospital or causing intermittent absences, a specified timeframe with a detailed treatment plan, a transition plan, and contact information for the physician	Treating physician, psychiatrist, or licensed psychologist
Release of Records	Gives parental consent for treating physicians to share information with the DCPS HHIP team	Parents/Guardians
Parent/Guardian Agreement	Explains HHIP team expectations of parents/guardians and student while HHIP services are being given	Parents/Guardians
School Request for Service	Includes basic information about the student (e.g. date of birth, ID number, grade level) and contact information for the parents/guardians	School HHIP Designee
Immunization	Confirms the student's vaccinations are up-to-date	School nurse

In the case of a planned long-term student absence (e.g. scheduled upcoming student surgery and recovery), all forms should be submitted prior to the absence. In the case of an unplanned student absence (e.g. student accident), all forms should be submitted as soon as possible. All forms should be submitted to the HHIP Designee.

Parents/Guardians have ten calendar days to submit remaining forms after submitting the School Request for Services Form, otherwise parents/guardians and the HHIP Designee will receive an Incomplete Referral letter. The initial referral will be continued upon receipt of the missing documents.

Eligibility Determination
According to the SY18-19 Parent Guide to HHIP, the centralized HHIP team reviews HHIP referrals and ultimately determines eligibility. Eligibility determinations are made within five

[5] "Home and Hospital Instruction Program (HIP) Forms." *District of Columbia Public Schools*, 26 February 2019, https://dcps.dc.gov/node/1008962.

instructional days of receiving the completed referral and after discussing the student's health condition with the medical provider who completed the Physician Verification Form.

If a referral is approved, a Beginning of Service Form is sent to the HHIP Designees and parents/guardians including service start and end dates as well as location of instructional services. The centralized HHIP team collaborates with the HHIP teacher(s) and Related Service Provider(s) (if appropriate). The HHIP teacher(s) communicates with parents/guardians within 48 hours to schedule classes. Instruction begins within 5 days of class scheduling.

If a referral is denied, a No Service Form is sent to the HHIP Designee and parents/guardians stating reasons for denial. The centralized HHIP team also calls parents/guardians to discuss ineligibility and next steps.

End of Service
HHIP services are discontinued after thirty calendar days unless a Medical Re-certification Form is completed by a medical provider. The school is notified that the student's service end date is approaching and informs the school of any transition actions (e.g. transition meeting, 504 Plan Referral, SPED evaluation, etc.). The End of Service Form is sent to HHIP Designee and parents/guardians. According to the DCPS 2016 Home and Hospital Instruction Program Handbook, the HHIP Designee will be notified of the student's approaching return to school date at least one week in advance. The HHIP Designee will communicate with the parent/guardian to inquire whether HHIP services need to be continued.[6]

Continuous Enrollment
Students who have completed at least nine months of the current school year with HHIP may be eligible for continued enrollment. In order to be eligible for continuous enrollment the following criteria must be met:

- Student must be enrolled in HHIP for at least nine months in current school year;
- Parents/guardians, the school, the HHIP centralized team, and the medical provider do not expect the student to return to school-based instruction due to a chronic illness and/or an illness resulting from their identified disability; AND
- Treating physician, psychiatrist, or psychologist must submit an updated Physician Verification Form stating that the student continues to be unavailable for school-based instruction despite treatment.

Eligible students will receive an enrollment packet prior to the end of the current school year. The parent/guardian is responsible for submitting enrollment paperwork during the first ten school days of the proceeding school year. After that period, the parent/guardian will receive a written notice stating that their child's services have been suspended.

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[6] District of Columbia Public Schools. "Home and Hospital Instruction Program Handbook." *District of Columbia Public Schools FY18 Performance Oversight Agency Response Attachments,* final version, August 2016.

Return to School Transition
If a student attempts to return to school prior to the date listed on the Physician Verification Form, they must receive written documentation from their medical provider stating that it is permissible to return to school.

School teams and HHIP staff members work collaboratively with parents/guardians and medical and/or community resources to coordinate reintegration back to school-based instruction, including any reasonable accommodations.

For HHIP students who were receiving special education services through an IEP, the HHIP Case Manager will work collaboratively with the school IEP team to complete the necessary steps to transition the student back to school-based instruction. An IEP meeting will be held for students to ensure that the IEP is updated.

Appeals
Parents/guardians have the right to appeal decisions made by the HHIP Program Office. The process is as follows:

1. A parent/guardian may send a written request for an appeal. Appeals must be sent to the Director of Academic Programs within ten business days of the date when the eligibility determination is provided to the parent or guardian.
2. The appeal will be reviewed by a three-member panel within the Division of Specialized Instruction.
3. The panel will issue a written response to the parent/guardian within fifteen business days of receipt of the appeal.

HHIP Implementation
Though DCPS operates a HHIP program that is informed by established policies and procedures, HHIP administrative and instructional services are not consistently implemented according to those policies and procedures. Public testimony from parents and advocates illuminate examples of HHIP implementation failures.

During the joint public hearing on B23-0392 on October 21, 2019, a parent of a DCPS student testified that his child's HHIP services have never started on time in the last ten school years. For the 2019 – 2020 academic school year, his child's services began eight weeks after the school year began.[7] This parent's spouse, who also testified at the same hearing, shared that despite filing 11 state complaints and four due process complaints that resulted in favorable decisions, DCPS has not complied with the decisions and OSSE has not enforced DCPS compliance.[8]

During the same hearing on October 21, 2019, Children's Law Center shared concerns about HHIP transparency for DCPS families. They testified, "We're aware of cases in which schools

[7] "Joint Public Hearing, Committee of the Whole and Committee on Education." *Council of the District of Columbia,* 21 October 2019, Washington, D.C., https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=5190.
[8] Ibid.

repeatedly raised truancy concerns about a sick child who had been absent from school for more than 10 days, yet never informed the parents of the option of requesting HHI… And while DCPS has posted a parent guide to HHI on its website, it has yet to publish its HHI handbook so parents can fully understand the process."[9]

HHIP implementation failures aside, D.C. public charter schools are not required to establish a home and hospital instruction program. While some charter schools have chosen to establish their own program, others have not, and standardization across public charter schools' home and hospital instruction programs does not exist. For example, some charter schools have published written HHIP policies while others have no written policies that guide their program implementation.

Home and Hospital Instruction Programs

Legislative and regulatory precedent exists in establishing home and hospital instruction programs. Code of Maryland Regulations Chapter 13A.03.05, Administration of Home and Hospital Teaching for Students, directs each Maryland local school system to "make instructional services available to students who are unable to participate in their school of enrollment…during convalescence or treatment time in a medical institution, or therapeutic treatment center, and at the student's place of residence, or all of these."[10] The code further directs local school systems to determine the need for service and begin instruction as soon as possible and enumerates a minimum instructional hours for students in the program.[11]

Virginia Administrative Code 8VAC20-131-180, Off-Site Instruction, establishes that "homebound instruction shall be made available to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist."[12] It further ensures coordination in services for students who are eligible for special education or related services.

B23-0392 aims to promptly support students during their absence of ten or more consecutive or cumulative days due to a health condition to minimize interruption in a student's academic coursework. It also aims to remove unnecessary barriers to instructional services by determining eligibility based on cumulative and consecutive absences, allowing diversity of medical professionals to certify the child's medical need for home or hospital instruction, establishing the right to home and hospital instructional services for all D.C. students across DCPS and public charter schools, and allowing a medical certification of need to broadly consider a child's health condition as a justification for home or hospital instruction. Finally, B23-0392 aims to offer opportunities for parent recourse in the event that an eligibility determination is denied.

The Committee Print

The Committee Print for B23-0392 contains several changes from the introduced bill. A description of the committee print, with explanations for substantive changes, follows.

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[9] Ibid.
[10] COMAR 13A.03.05
[11] Ibid.
[12] 8 VAC 20-131-180

The Committee Print broadens reasons for student absence from "physical condition or psychological condition" to "health condition" to be more inclusive of diverse student health needs and to minimize the role of discretion in categorizing a student's health need.

The Committee Print redefines "medical certification of need" to include a recommendation from a licensed physician, licensed nurse practitioner, licensed clinical psychologist, licensed clinical social worker, licensed mental health counselor or therapist, or physician's assistant that a student receive home or hospital instruction.

The Committee Print includes "licensed mental health counselor or therapist" as a medical professional who can complete the medical certification of need to reflect the diverse medical professionals who students in D.C. visit.

The Committee Print expands home and hospital instruction programs' intent to allow students to stay current with classroom instruction in core subjects to the greatest extent possible, to foster coordination between classroom teachers and home and hospital instruction teachers, to facilitate rapid reintegration into classroom instruction when the student returns to school, and to ensure coordination of home and hospital instruction with any special education or related services and accommodations for the student.

The Committee Print explicitly states that a student shall be eligible to receive home and hospital instruction and the LEA shall approve the application for home and hospital instruction if a medical certification of need has been submitted to the LEA to minimize the role of LEA discretion in the medical certification of need.

The Committee Print explicitly states that a medical recertification of need shall not be required for periods of less than 60 days for absences caused by the health condition as described in the preceding medical certification of need to minimize barriers to instruction for students whose health conditions are known to cause long-term absence from school.

The Committee Print provides the right to appeal an eligibility determination to parents only to prevent delay of academic instruction for students and to minimize the role of LEA discretion in the medical certification of need.

II. LEGISLATIVE CHRONOLOGY

July 9, 2019	B23-0392, "Students' Right to Home and Hospital Instruction Act of 2019" is introduced by Councilmembers Grosso Todd, T. White, Nadeau, Cheh, and R. White.
July 9, 2019	B23-0239 is referred to the Committee on Education and Committee of the Whole with comments from the Committee on Health.

July 19, 2019	Notice of Intent to Act on B23-0392 is published in the *District of Columbia Register.*
October 4, 2019	Notice of roundtable hearing on B23-0392 is published in the *District of Columbia Register.*
October 21, 2019	The Committee on Education holds a public roundtable on B23-0392.
February 11, 2020	The Committee on Education considers and marks up B23-0392.

III. POSITION OF THE EXECUTIVE

The following witnesses testified on behalf of the Executive.

Karri Larkin, Senior Deputy Chief of Specialized Instruction at the District of Columbia Public Schools, presented testimony opposing the bill as drafted due to what they say is duplicative or conflicts with their existing work. Larkin stated that HHIP includes a transparent referral process for families and that referrals are only denied when documentation is incomplete. And barrier to access is removed, or the medical evaluation does not indicate home or hospital instruction. Larkin state that DCPS thought it was inappropriate for OISSE to serve as an appeals board.

Shana Young, Chief of Staff at the Office of the State Superintendent of Education, presented testimony in opposition to the proposed bill, specifically section 6 and lines 110-111 which outline the data reporting requirements. Young stated that OSSE does not have the internal capacity to review medical records or history of overruling the advice of a students' doctor. OSSE believes that individual LEAs can handle their own appeals processes. OSSE also stated that the definition of physical condition and psychological condition should align with federal definitions.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from the Advisory Neighborhood Commissions.

V. SUMMARY OF TESTIMONY AND STATEMENTS

The Committee on Education held a public hearing on B23-0392 on Monday, October 21, 2019. The testimony summarized below is from that hearing. A copy of all written testimony received is attached to this report and the video recording of the hearing is available online at https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=5190. The Hearing Record is on file with the Office of the Secretary of the Council.

The following witnesses testified at the hearing:

Buck Logan, Special Counsel at Children's Law Center, presented testimony in support of the proposed bill. Logan spoke on the lack of transparency parents have when dealing with the Home or Hospital Instruction program (HHIP). Specifically, parents don't have sufficient information about when to request HHIP or understand the process for requesting HHIP services. Logan also stated that HHIP is being delayed or denied without justification, partly due to schools second guessing a certification submitted by a student's doctor. Logan also stated that even when students are found eligible, there's no legally minimum standards governing the quantity and quality of HHIP. Logan stated that Children's Law Center recommended that the bill require students to receive HHIP pending a denial appeal outcome. Logan testified that schools should be required to present evidence from a medical professional to rebut the certification from a student's doctor. Children's Law Center recommended allowing parents to take appeals to the Office of Administrative Hearings. Logan testified that Children's Law Center recommends that the bill specify the minimum amount of instruction for a student to receive under HHIP. Specifically, they recommend requiring LEAs to provide at least 5 hours per week of direct home or hospital instruction for K-5th grade, and 2 ½ hours per week per core subject for students in grades 6-12.

Margaret Kohn, Attorney at Law, testified that time between the request of the services through HHIP and the delivery of services needs to be changed. She also testified that the ability of education bureaucrats to override medical recommendations. Ms. Kohn gave an example of a high school student who had mental health and neurological needs who didn't receive response until 51 days after the school received the paperwork from the psychiatrist. She said that the student did not receive no home instruction. Another request was submitted during the summer months after the child was hospitalized again and HHIP did not respond until 76 days later with a letter denying eligibility. In Ms. Kohn's testimony, she included the timeline of the parents' efforts to obtain HHIP services, starting from April when the psychiatrist signs forms for the first request for Home instruction, to September when the second request was denied. She discussed the appeals process and stated that the bill does not include language to include a health or mental health professional on the appeals panel and that Office of the State Superintendent of Education (OSSE) should not be given total discretion in the selection of the members for the panel. Ms. Kohn provided suggestions on wording in the bill, specifically, she stated that the phrase "academic and or adaptive life skills as appropriate" be used rather than the term "academic instruction." She also suggested that the term "support" should be defined in the definition of Home or Hospital instruction program.

Molly Whalen, Executive Director the DC Association for Special Education, testified in support of the bill. They also agreed with Children's Law Center on their recommendations to clarify that the HHIP policies cover partial or intermittent absences that can add up to 10 or more days, and require LEAs to provide parents with a copy of the HHIP policies once they request services or a student accumulates 10 days of absences due to a medical condition.

Taalib-Din Uqdah presented testimony on his experience with a child with multiple disabilities his disapproval of the proposed legislation. Mr. Uqdah suggested adding language to lines 12-25, after the phrase "Instruction program" to read *"with a streamlined enrollment*

process for the neighborhood school or other least restrictive environment (LRE)" and after the phrase "cumulative school days" to read *"or any student who is reasonably expected to continue in the program on an indefinite or long term basis"* due to a *"medical,"* physical or a psychological condition...Mr. Uqdah attached a copy of his 20011 complaint to the Chief of Special Education at the OSSE.

The following witnesses submitted written testimony and did not testify at the hearing:

Two Rivers Public Charter School submitted testimony highlighting their concerns with the proposed bill. Their testimony stated that the language around "medical certification of need" is too vague and suggested that OSSE develop a standardized form to include a statement and rationale that justifies the need for the student to be out of school, length of times for HHIP services, and contact information for the recommending clinician. They recommended clarity around a timeline for re-certification of the placement. Two Rivers recommended allowing LEAS to create plans that would take the needs of individual students into account. They stated that the council fails to take into account technology that may be more amenable to families and conducive to the child's learning when the bill specifies that LEAs can deliver "instruction by virtual means only when necessary." They asked for clarification regarding services for general education versus special education students. Two Rivers also expressed concerned over the funding for the new requirement, stating that LEAs received no additional funding for providing the service.

Nirmal N. Maitra, Medical Student at Georgetown University School of Medicine and Co-founder of Heroes for Hearts Inc., submitted testimony in support of Maitra's testimony described the effects of missing school and explained why it is important to reduce the amount of school time a student will miss and give students the ability to access a quality education during their time out of school.

VI. IMPACT ON EXISTING LAW

The attached legal sufficiency issued by the District's General Counsel Office states that the bill is legally and technically sufficient for Council consideration. Bill 23-0392 does not amend existing D.C law; it adds new sections to the code.

VII. FISCAL IMPACT

B23-0392 was sequentially referred to the Committee on Education and to the Committee of the Whole. As such, the Committee of the Whole shall provide a fiscal impact at their markup.

VIII. SECTION-BY-SECTION ANALYSIS

Section 1 — States the short title of B23-0392 as the "Students' Right to Home and Hospital Instruction Act of 2019."

Section 2	Provides terms used in this legislation.
Section 3	Provides overview and intent for a home and hospital instruction program.
Section 4	Provides eligibility determination process to receive home and hospital instructional services.
Section 5	Provides process for continuing and terminating home and hospital instructional services.
Section 6	Provides appeals process to be administered by OSSE.
Section 7	Provides delivery of home and hospital instruction program services.
Section 8	Provides instruction for maintaining student attendance during home and hospital instruction.
Section 9	Provides instruction for coordination between healthcare institutions that admit students eligible to receive home or hospital instruction and the student's LEA.
Section 10	Provides instruction for LEAs to publish written home and hospital instruction program policies.
Section 11	Provides rulemaking authority to OSSE.
Section 12	Provides the fiscal impact statement.
Section 13	Provides the effective date.

IX. COMMITTEE ACTION

On February 11, 2020, the Committee on Education held a meeting to consider B23–0392, the "Students' Right to Home and Hospital Instruction Act of 2020." The meeting was called to order at 3:00 p.m. and B23–0392 was one of two items on the agenda. After ascertaining a quorum (consisting of Chairperson Grosso, Councilmember Allen, Councilmember Bonds, and Councilmember R. White) Councilmember Grosso discussed the background for B23-0392.

Next, Chairperson Grosso opened the floor for discussion. No committee members provided comment on the bill.

Then Chairperson Grosso moved *en bloc* the committee print and committee report for B23-0302 with leave for staff to make technical and conforming changes. The vote was unanimous with

Chairperson Grosso, Councilmember Allen, Councilmember Bonds, and Councilmember R. White all voting in favor. The meeting adjourned at 3:18 p.m.

X. ATTACHMENTS

1. Secretary's Referral Memo
2. B23–0392 As Introduced
3. Written Testimony and Comments
4. Legal Sufficiency Determination
5. Committee Print for B23–0392

Government of the District of Columbia
Office of the Chief Financial Officer

Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Phil Mendelson** **Chairman, Council of the District of Columbia**
FROM:	**Jeffrey S. DeWitt** **Chief Financial Officer**
DATE:	**November 16, 2020**
SUBJECT:	**Fiscal Impact Statement – Students' Right to Home and Hospital Instruction Act of 2020**
REFERENCE:	**Bill 23-392, Draft Committee Print as provided to the Office of Revenue Analysis on November 5, 2020**

Conclusion

Funds are not sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. The bill will cost $162,000 in fiscal year 2022 and $1.74 million over the financial plan.

Background

The bill requires that all local education agencies (LEAs) adopt and implement a home and hospital instruction program that provides academic instruction and support to students who have been or will be absent due to a health condition, on a continuous, partial, or intermittent basis, for ten or more consecutive or cumulative school days during a school year. Programs must promote student academic progress and ensure coordination with any special education services. Each LEA is required to designate at least one employee to manage the home and hospital instruction program. Each LEA must publish its written home and hospital instruction program policy online and provide written copies to parents upon request. All LEAs must implement a home and hospital instruction program by school year 2022-2023.

Parents of students can request, either orally or in writing, an application for home or hospital instruction. Once a LEA receives an application, including a medical certification of need,[1] a student

[1] Medical certification of need is a written diagnosis with an explanation of how a health condition has caused or is anticipated to cause the student to be absent, on a continuous, partial, or intermittent basis, from their

is eligible for home or hospital instruction. An LEA may deny an application only in the event that a medical certification of need is not submitted to the LEA. Instruction must begin within five school days of determining a student is eligible for home or hospital instruction. Students can receive home or hospital instruction for up to sixty days and can receive an additional sixty days if a parent submits an approved recertification of need to extend home or hospital instruction. LEAs can provide instruction directly to students, contract with private providers, contract with other LEAs, or use a mix of these options.

The bill gives parents the right to appeal a home or hospital instruction eligibility determination made by an LEA. The Office of the State Superintendent of Education (OSSE) must administer a process for reviewing these appeals. OSSE will convene a three-member panel to review an appeal and will issue written responses to an appeal no later than fifteen school days following receipt of an appeal.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. The bill will cost $162,000 in fiscal year 2022 and $1.74 million over the financial plan.

The District of Columbia Public Schools' (DCPS) Home and Hospital Instruction Program (HHIP) currently provides instruction and support to students that have health conditions. DCPS must slightly modify this program to satisfy the requirements of the bill. Specifically, DCPS must hire a central office employee to directly manage HHIP and to implement the new application and appeals process. DCPS must also hire one HHIP teacher to handle an increase in the number of approved HHIP applications since students are automatically eligible if a medical certification of need is submitted. DCPS will also have increased translation costs since it will provide written notification of eligibility determinations to parents. In total, DCPS requires $226,000 in fiscal year 2023 and $452,000 over the financial plan to implement the bill. DCPS will also receive additional funding in fiscal year 2023 and fiscal year 2024 based on adjustments made to the Uniform Per Student Funding Formula (UPSFF). The weighting adjustments are necessary to cover public charter school costs (see below).

District of Columbia public charter LEAs contract with private providers on a case-by-case basis to provide instruction to students that cannot attend school because of a health condition. To comply with the timeline requirements in the bill, charter LEAs will need to enter into retainer agreements with private providers to have home and hospital instructors available on standby. The Public Charter School Board estimates that these retainers will cost $5,000 per year for the 57 LEAs with students in compulsory grades. In total, the charter sector will need $285,000 in fiscal year 2023 and $570,000 over the financial plan.[2]

OSSE must hire one employee who will implement and manage a home and hospital instruction eligibility determination appeal process. This employee must be hired in fiscal year 2022 to develop regulations prior to LEAs implementing home and hospital instruction programs in fiscal year 2023.

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school of enrollment for ten or more consecutive or cumulative school days during a school year, and a recommendation that the student receive home or hospital instruction, to the extent permitted by the student's health condition, that is certified by a licensed physician, licensed nurse practitioner, licensed clinical psychologist, licensed mental health counselor or therapist, or physician's assistant.

[2] Compulsory grades are kindergarten through Grade 12.

OSSE will also need additional funding to contract with a vendor to build and maintain an IT system to track incoming requests for appeal and panel review. In total, OSSE needs an additional $162,000 in fiscal year 2022 and $446,000 over the financial plan to implement the bill.

Bill 23-392 - Students' Right to Home and Hospital Instruction Act of 2020 Total Costs					
DCPS	FY 2021	FY 2022	FY 2023	FY 2024	Total
DCPS Salary and Fringe [a]	$0	$0	$223,000	$224,000	$447,000
Translation Costs	$0	$0	$3,000	$3,000	$6,000
Additional Funding based on UPSFF Adjustments[b]	$0	$0	$134,000	$134,000	$268,000
DCPS Total	$0	$0	$360,000	$361,000	$721,000
Public Charter Schools	FY 2021	FY 2022	FY 2023	FY 2024	Total
Public Charter School Total[c]	$0	$0	$285,000	$285,000	$570,000
OSSE	FY 2021	FY 2022	FY 2023	FY 2024	Total
Salary and Fringe[d]	$0	$122,000	$122,000	$122,000	$366,000
IT Costs[e]	$0	$40,000	$20,000	$20,000	$80,000
OSSE Total	$0	$162,000	$142,000	$142,000	$446,000
Grand Total	$0	$162,000	$787,000	$788,000	$1,737,000

Table Notes:

(a) Assumes salary for one HHIP teacher and one central office employees at a fringe rate of 16.1 percent. Assumes 1.5 percent growth in fringe costs.
(b) Per the UPSFF ratio used to calculate the fiscal year 2021 budget.
(c) Assumes $5,000 cost per charter LEA with compulsory grades.
(d) Assumes one Grade-13, Step-5 employee and a fringe rate of 23.1 percent. Assumes 1.5 percent growth in fringe costs.
(e) Recurring maintenance and hosting costs begin in fiscal year 2023.

COMMITTEE PRINT **Draft**
Committee of the Whole **(11.15.20)**
November 17, 2020

A BILL

23-392

IN THE COUNCIL FOR THE DISTRICT OF COLUMBIA

_____

To require the District of Columbia Public School system or any individual or group of public charter schools operating under a single charter in the District to adopt and implement a home and hospital instruction program that provides academic instruction and support to students who have been or will be absent from their school of enrollment for 10 or more consecutive or cumulative school days during a school year due to a health condition; to establish an appeals process to be administered by the Office of the State Superintendent Education; and to require the Office of the State Superintendent of Education to promulgate implementing regulations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Students' Right to Home and Hospital Instruction Act of 2020".

Sec. 2. Definitions.

For the purpose of this act, the term:

(1) "Health condition" means a physical or mental illness, injury, or impairment that prevents a student from participating in the day-to-day activities typically expected during school attendance.

(2) “Home and hospital instruction” mean academic instruction and support provided to a student participating in a home and hospital program.

39 (3) "Home and hospital instruction program" means a program that provides instruction
40 and support to students who have been or are anticipated to be absent, on a continuous, partial, or
41 intermittent basis, from their school of enrollment for 10 or more consecutive or cumulative
42 school days during a school year due to a health condition.
43 (4) "Home and hospital instruction policy" means a public document written by an LEA
44 that:
45 (A) Sets forth the process for applying for home and hospital instruction and
46 appealing a denial of eligibility; and
47 (B) Includes the required contents of a medical certification of need.
48 (5) "IDEA" means the Individuals with Disabilities Education Act, approved April 13,
49 1970 (84 Stat. 175; 20 U.S.C. § 1400et seq.), and its implementing regulations.
50 (6) "IEP" means an Individualized Education Plan, which is a written plan that special
51 education programs and services to be provided to meet the unique educational needs of a child
52 with a disability, as required under section 614(d) of IDEA (20 U.S.C. § 1414(d)).
53 (7) "LEA" means local education agency, which is the District of Columbia Public
54 School system or any individual or group of public charter schools operating under a single
55 charter in the District.
56 (8) "Medical certification of need" means a written statement signed by a licensed
57 physician, licensed nurse practitioner, licensed clinical psychologist, licensed mental health
58 counselor or therapist, or physician's statement that:
59 (A) Certifies that a student has been diagnosed with a

60 health condition and explains how the health condition has caused or is anticipated to cause the
61 student to be absent, on a continuous, partial, or intermittent basis, from the student's school of
62 enrollment for 10 or more consecutive or cumulative school days during a school year;
63 (B) Contains a recommendation that the student receive home or hospital
64 instruction, to the extent permitted by the student's health condition;
65 (C) States the anticipated duration of the student's health condition; and
66 (D) States whether the student's health condition is anticipated to cause
67 continuous, partial, or intermittent absence from school.
68 (9) "Medical recertification of need" means a medical certification of need verifying the
69 continued need for home or hospital instruction.
70 (10) "OSSE" means the Office of the State Superintendent of Education established by
71 section 2 of the State Education Office Establishment Act of 2000, effective October 21, 2000
72 (D.C. Law 13-176, D.C. Official Code § 38-201).
73 (11) "Parent" means a parent, guardian, or other person who has custody or control of a
74 student enrolled in a school or in an LEA.
75 (12) "Section 504" means Section 504 of the Rehabilitation Act of 1973, approved
76 September 26, 1973 (87 Stat. 394; 29 U.S.C. § 794), and its implementing regulations.
77 (13) "Section 504 Plan" means a written plan that specifies the accommodations and
78 services provided to a student pursuant to Section 504.
79 Sec. 3. Home and hospital instruction program.
80 (a) Beginning in school year 2022-2023, every LEA shall adopt and implement a home
81 and hospital instruction program. Such a program shall:

82 (1) Be designed to promote a participating student's academic progress, allow the
83 student to stay current with classroom instruction in core subjects to the greatest extent possible,
84 foster coordination between the student's classroom teachers and the home or hospital
85 instructors, and facilitate the rapid reintegration into classroom instruction when the student
86 returns to school; and;
87 (2) Ensure coordination of home and hospital instruction with any special
88 education services, IEP, or Section 504 plan the student receives or is eligible to receive and the
89 continued provision of any special education and related services and accommodations to the
90 student.
91 (b) Every LEA shall designate at least one employee to manage the LEA's home and
92 hospital instruction program.
93 (c) Nothing in this act shall alter an LEA's obligations under IDEA, Section 504, or the
94 Americans with Disabilities Act.
95 Sec. 4. Home and hospital instruction approval process.
96 (a)(1) A parent of a student may submit an oral or written request for home or hospital
97 instruction to the LEA in which the student for whom the parent is requesting the instruction is
98 enrolled; provided, that a request may not be granted until the parent submits a written
99 application consistent with the requirements of this subsection.
100 (2) Upon receipt of a request for home or hospital instruction from a parent of a
101 student enrolled in the LEA, the LEA shall document the request no later than 2 school days
102 following receipt and shall provide information to the parent explaining the process for submitting
103 a written application for home or hospital instruction and obtaining a medical certification of need.

104 (3) A student shall be approved for home or hospital instruction when the LEA in
105 which the student is enrolled receives a completed written application and medical certification of
106 need. An LEA may deny an application for home or hospital instruction only in the event that the
107 application or a medical certification of need is missing or incomplete.
108 (4) Upon approval of home or hospital instruction pursuant to this subsection, the
109 LEA shall commence the delivery of such instruction in accordance with section 7 of this act.
110 During the provision of such instruction, the LEA may make reasonable requests for information
111 concerning the student's continuing medical need for home or hospital instruction and work with
112 a student's parent to develop accommodations or measures that would permit the student to
113 return to school.
114 (5) OSSE shall promulgate regulations governing the home and hospital
115 instruction process that are consistent with this act and that establish safeguards that ensure due
116 deference to the medical opinions set forth in the student's medical certification of need while
117 facilitating the return of the student to school when medically feasible.
118 (c)(1) The LEA shall issue a written decision approving or denying a home or hospital
119 instruction program application submitted pursuant to subsection (a) of this section. The decision
120 shall contain a written explanation of the basis for the approval or denial, and if the LEA denies a
121 request, the decision shall state specifically that the basis for its determination was a missing or
122 incomplete application or medical certification of need.
123 (2) The LEA shall issue the written decision required in paragraph (1) of this
124 subsection no later than five days following the receipt of the application for home or hospital
125 instruction.
126 Sec. 5. Termination or extension of home or hospital instruction.

127 (a) Except as provided in subsection (b), a student's home or hospital instruction shall last
128 no longer than the estimated duration of the student's health condition, as provided in the
129 students medical certification of need, or 60 days, whichever is less.
130 (b) A parent may extend a student's home or hospital instruction for additional periods of
131 no more than 60 days each by submitting medical recertifications of need at least five days
132 before the date on which the parent desires the extension to commence. A medical
133 recertification of need shall not be required to be submitted for home or hospital instruction that
134 occurs during a period of less than 60 days from the date home or hospital instruction
135 commences.
136 Sec. 6. Appeals process.
137 (a) OSSE shall administer an appeals process for the denial of an application for home or
138 hospital instruction submitted pursuant to section 4 or 5.
139 (b) A parent has a right to appeal the approval or denial decision made by the LEA. The
140 appeals process is as follows:
141 (1) A parent shall submit a written request for an appeal to OSSE. As part of the
142 parent's written request, the parent may request an opportunity to be heard in person by the
143 appeals panel.
144 (2) The appeal shall be reviewed by a 3-member panel within OSSE.
145 (3) The parent shall have the burden of proof on appeal; provided, that there shall
146 be a presumption in favor of the medical opinion set forth in the medical certification of need
147 submitted in support of the request for home or hospital instruction. The LEA shall have the
148 burden of proof in seeking to rebut this presumption through the submission of evidence from a
149 qualified health care professional.

150 (4) The appeals panel shall issue a written response to the parent's request for an
151 appeal no later than 15 school days following receipt of the appeal.
152 (5) The LEA shall implement the decision of the appeals panel no later than 5
153 days following its issuance.
154 Sec. 7. Delivery of home and hospital instruction.
155 (a) An LEA shall begin delivering home and hospital instruction no later than 5 school
156 days following an approval of an application for home or hospital instruction.
157 (b) An LEA shall provide a minimum number of per week hours of direct instruction for
158 eligible students according to the medical certification of need.
159 (1) For eligible students absent on an intermittent or partial basis, the LEA may
160 adjust the minimum required amount of direct instruction based on the student's schedule and
161 amount of in-school instruction the student is expected to receive.
162 (2) For purposes of this subsection, direct instruction shall mean instruction
163 provided in-person by a home or hospital instructor or, with the consent of the parent, instruction
164 provided by a home or hospital instructor via real-time videotelephony; provided, that an LEA
165 may provide direct instruction via real time videotelephony without the consent of the parent in
166 the following circumstances:
167 (A) During a public health emergency;
168 (B) When the student has been diagnosed with a communicable disease;
169 (C) When a household member has been diagnosed with a communicable
170 disease if the student is to receive instruction at home; or
171 (D) When the LEA determines safety concerns prevent the delivery of in-
172 person services.

173 (c) An LEA shall develop a home and hospital instruction program that provides content
174 aligned to that being provided in the student's classroom.
175 (d) To satisfy the provisions of this section, an LEA may:
176 (1) Employ staff to provide instructional services to a student;
177 (2) Contract with private providers to deliver instructional services;
178 (3) Contract with other LEAs to provide instructional services; or
179 (4) Combine any of the delivery options described in paragraphs (1) through (3)
180 of this subsection.
181 Sec. 8. Attendance.
182 An LEA shall maintain a student receiving home or hospital instruction on the regular
183 attendance roll and count the student as medically excused, except when a student is not
184 available for home or hospital instruction, in which event the student may be counted absent.
185 Sec. 9. Healthcare institutions.
186 (a) A healthcare institution that admits a student approved to receive home or hospital
187 instruction under this act shall, consistent with its obligations under federal and state law,
188 cooperate and coordinate with the student's LEA in providing such instruction to the student.
189 (b) Each healthcare institution referenced in subsection (a) shall establish a point of
190 contact to coordinate home or hospital instruction with the LEA.
191 Sec. 10. Transparency and accountability.
192 (a) Every LEA shall publish its written home or hospital instruction program policy
193 online in a reader-friendly format and provide a copy of the program policy to parents after a
194 request for home or hospital instruction has been made.

195 (b) On an annual basis, each LEA shall report to OSSE approvals or denials to provide
196 home or hospital instruction made, including reasons for denial and the name of the individual
197 who provided the medical certification of need, and type of instruction delivered.
198 (c) Upon submission of an application for home or hospital instruction, the LEA shall
199 require the home or hospital designee to provide the parent with a notice of their rights as they
200 pertain to IDEA and Section 504, as appropriate.
201 Sec. 11. Rulemaking authority.
202 No later than 120 days following the effective date of this act, OSSE shall promulgate
203 regulations to implement the provisions of this act.
204 Sec. 12. Fiscal impact statement.
205 The Council adopts the fiscal impact statement in the committee report as the fiscal
206 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
207 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).
208 Sec. 13. Effective date.
209 This act shall take effect following approval by the Mayor (or in the event of veto by the
210 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
211 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
212 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
213 Columbia Register.